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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

CARMEN GARCIA, individually and on
behalf of the State of California, as a private
attorney general, CHANCE MACAIRE, and
ARTURO SARMIENTO III, on behalf of the
State of California, as private attorneys
general,

Plaintiffs,

vs.

CALIBER HOLDINGS OF CALIFORNIA,
LLC; CALIBER HOLDINGS, LLC.;
CALIBER HOLDINGS CORPORATION;
PHILLIP TARIN, an individual; and Does 1
through 20, inclusive,

Defendants.

Case No. **S-CV-0050365**

**NOTICE OF MOTION AND
MOTION TO APPROVE PAGA
SETTLEMENT; and,**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION**

Hearing Date: December 10, 2024

Hearing Time: 8:30 a.m.

Judge: Hon. Alan V. Pineschi
Dept.: 42

Action Filed: April 24, 2023
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT at 8:30 a.m. on December 10, 2024, or as soon
3 thereafter as the matter can be heard, in Department 42 of the above entitled Court before the
4 Honorable Alan V. Paneschi, Plaintiffs Carmen Garcia, Chance Macaire, and Arturo
5 Sarmiento III (“Plaintiffs”) will and hereby do move for an order approving the settlement of
6 the PAGA claim alleged against Defendants Caliber Holdings Of California, LLC, Caliber
7 Holdings, LLC, Caliber Holdings Corporation, and Phillip Tarin. (“Defendants”) in
8 accordance with Labor Code §2699(l). The proposed settlement is set forth in the
9 accompanying PAGA Settlement Agreement (“Agreement”).

10 This Motion will be based on this notice, the accompanying points and authorities, the
11 Declaration of Kyle Nordrehaug, the Declaration of Timothy Del Castillo, the Declarations of
12 the Plaintiffs, the Agreement, and the complete files and records in this action. The Labor
13 Workforce Development Agency has been served with this motion and the Settlement
14 Agreement as set forth in the accompanying proof of service.

15 Respectfully submitted,

16 Dated: November 12, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug

20 Attorneys for Plaintiffs

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	6
II. RELEVANT FACTS.....	6
III. TERMS OF THE PAGA SETTLEMENT	9
IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS.....	11
V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM.....	12
VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE.....	15
VII. CONCLUSION.....	17

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>Amaro v. Anaheim Arena Mgmt., LLC,</i> 69 Cal. App. 5th 521 (2021)	16
<i>Boyd v. Bank of America,</i> 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	16
<i>Cardenas v. McLane Foodservice, Inc.,</i> 2011 U.S. Dist. LEXIS 13126 (C.D. Cal. 2011).....	14
<i>Carrington v. Starbucks Corp.,</i> 30 Cal.App.5th 504 (2018).....	13
<i>Chavez v. Netflix, Inc.,</i> 162 Cal.App.4th 43 (2008).....	16
<i>Fleming v. Covidien,</i> 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	13
<i>Hopkins v. Stryker Sales Corp.,</i> No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013).....	17
<i>In re Taco Bell Wage & Hour Actions,</i> 2016 U.S. Dist. LEXIS 48557 (E.D. Cal. Apr. 6, 2016).....	14
<i>Iskanian v. CLS Transportation,</i> 59 Cal. 4th 348, 381 (2014).....	6
<i>Ketchum v. Moses,</i> 24 Cal.4th 1122, 1132 (2001).....	17
<i>Kim v. Reins Int'l Cal., Inc.,</i> 9 Cal. 5th 73, 80 (2020)	9
<i>Laffitte v. Robert Half Int'l,</i> 1 Cal. 5th 480, 503 (2016).....	16
<i>Makabi v. Gedalia,</i> 2016 Cal. App. Unpub. 1489 (2nd Dist. Ct. of App. 2016).....	13

1	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
2	182 Cal.App.4th 278 (2010).....	16
3	<i>Stetson v. Grissom</i> ,	
4	821 F.3d 1157, 1166 (9th Cir. 2016).....	17
5	<i>Vandervort v. Balboa Capital Corp.</i> ,	
6	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	16
7	<i>Wershba v. Apple Computer, Inc.</i> ,	
8	91 Cal.App.4th 224, 254 (2001).....	16
9	<i>ZB, N.A. v. Superior Court</i> ,	
10	8 Cal.5th 175 (2019).....	6, 10, 12

11 **Statutes:**

12	California Labor Code §2698.....	7
13	California Labor Code §2699.....	<i>passim</i>

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Carmen Garcia, Chance Macaire, and Arturo Sarmiento III (“Plaintiffs”)
4 reached a settlement of the California Private Attorneys General Act, Cal. Labor Code §2699,
5 *et seq.* (“PAGA”) claim asserted in this action against Defendants Caliber Holdings Of
6 California, LLC, Caliber Holdings LLC (“Caliber”), Caliber Holdings Corporation, and Phillip
7 Tarin (“Defendants”) (collectively, the “Parties”) which provides for a “Maximum Settlement
8 Amount” payment in the amount of \$4,090,000.00. In accordance with California Labor Code
9 §2699(l), Plaintiffs now ask this Court to review and approve the settlement of Plaintiffs’
10 PAGA claims.¹ This is only a settlement of the PAGA claims for civil penalties and is not a
11 class settlement and does not release the individual Labor Code claims, if any, of the affected
12 employees other than the Plaintiffs themselves. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
13 *Transportation*, 59 Cal.4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182
14 (2019) (unpaid wages are not recoverable under PAGA).

15 The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement
16 (“Agreement”). A true and correct copy of the Agreement which sets forth the terms for the
17 settlement of the PAGA claims is attached as Exhibit #1 to the Declaration of Kyle
18 Nordrehaug, filed herewith. Capitalized terms shall have the same meaning as defined in the
19 Agreement. The LWDA received notice of this Settlement, and this motion as set forth in the
20 accompanying proof of service.

21 A proposed order confirming review and approval of the PAGA settlement is submitted
22 herewith.

23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on April 14, 2023, on behalf of Plaintiff Garcia;
26 on March 3, 2023 on behalf of Plaintiff Chance Macaire; and June 21, 2024 on behalf of
27

28 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement of any civil action pursuant to this part.”

1 Plaintiff Sarmiento III, requesting authorization from the LWDA to seek civil penalties as
2 provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour
3 violations alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-day
4 notice period for the LWDA to notify of its intent to investigate expired on June 18, 2023 as
5 to Plaintiff Garcia; May 7, 2023 as to Plaintiff Macaire; and August 25, 2024 for Plaintiff
6 Sarmiento III. On October 9, 2024, Plaintiffs filed a First Amended Representative Action
7 Complaint (“Operative Complaint”) in this Court against Defendants, alleging individual
8 claims on behalf of Plaintiffs and a cause of action for recovery of civil penalties for Violation
9 of the PAGA [Labor Code §§ 2698, *et seq.*].

10 Plaintiffs and Defendants agreed to mediate with Michael Dickstein Esq. Prior to the
11 mediation, the Parties conducted significant investigation and discovery of the facts and law.
12 Caliber produced hundreds of documents relating to its policies, practices, and procedures
13 regarding paying non-exempt employees for all hours worked, overtime, meal and rest period
14 policies, payroll and operations policies, and more. Plaintiffs were provided with sufficient
15 records and data to determine the number of PAGA Members and the number of pay periods
16 in the PAGA Period. The Parties agree that the above-described investigation and evaluation,
17 as well as the information exchanged during the settlement negotiations, are more than
18 sufficient to assess the merits of the Parties’ positions and to compromise the issues on a fair
19 and equitable basis. (Declaration of Kyle Nordrehaug, at ¶3).

20 Plaintiffs’ theory of PAGA liability as argued at mediation alleged that Defendants are
21 liable for miscalculating overtime, meal period premiums, and sick pay as a result of not
22 including certain remunerations into the regular rate. For example, the following additional
23 remunerations were not fully incorporated into the regular rate for the purpose of paying the
24 correct rate: Q CSEP BONUS, Bonus Non-Discretionary Amt, CSEP Bonus Amt, GM Bonus
25 Amt, GM Other Bonus Amt, ProTech Bonus Amt, Purchase Power Amt, TAPS Bonus Amt,
26 Tech Bonus Amt. Plaintiffs expert determined that 40.8% of PAGA Members and 3.9% of pay
27 periods had overtime and additional remunerations, 14.5% of PAGA Members and .5% of pay
28

1 periods had meal premiums and additional remunerations, and 16.7% of PAGA Members and
2 .5 % of pay periods had sick pay and additional remunerations, creating regular rate issues.

3 Plaintiffs also alleged at mediation that Defendants did not provide all meal periods and
4 rest breaks to which the PAGA Members were entitled, identifying through their expert that
5 49,186 pay periods in the PAGA period exhibiting at least one meal break violation. As for
6 rest breaks, Defendants routinely caused interruptions by requiring PAGA Members to answer
7 phone calls and remain on Defendants' premises. Plaintiffs also alleged at mediation that there
8 were 215,428 unpaid off-the-clock hours due to the work performed by Plaintiffs and the
9 PAGA Members during meal and rest breaks, and during overtime when Plaintiffs and other
10 PAGA Members were instructed to clock out and finish the day's tasks.

11 Plaintiffs also alleged at mediation that Defendants failed to reimburse for all
12 reasonable expenses incurred by PAGA Members. Namely, Plaintiffs and PAGA Members
13 were required to use their personal cell phones, without reimbursement, for work-related
14 matters to communicate with their supervisors. Lastly, Plaintiffs also alleged at mediation that
15 Defendants issued inaccurate wage statements to the PAGA Members by failing to itemize all
16 hours worked, all applicable hourly rates, and the total hour worked at each rate. (Declaration
17 of Kyle Nordrehaug, at ¶3)

18 On May 23, 2024, the Parties engaged in an all-day mediation session before Mediator
19 Dickstein, a respected and experienced mediator knowledgeable of both the wage and hour
20 laws and representative claims at issue in this action. Through arms-length negotiations with
21 the assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in
22 this action which led to the signing of a Memorandum of Understanding memorializing the
23 settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

24
25 ² In addition to the Maximum Settlement Amount, Caliber has agreed to separately settle each
26 Plaintiffs' individual claims pursuant to separate confidential Individual Settlement Agreements
27 ("Individual Settlements") (Settlement Agreement at ¶ 70). The individual claims exist independent
28 and apart from the PAGA claims at issue before the Court. *See Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th
73, 80 (2020) (the "[s]ettlement of individual claims does not strip an Aggrieved Employee of
standing, as the state's authorized representative, to pursue PAGA remedies" nor resolve the PAGA
claims.).

1 The settlement was negotiated in light of all known facts and circumstances and the
2 uncertainty associated with litigation – including the risk of Plaintiffs not being able to
3 maintain representative claims, the difficulty of proving Plaintiffs’ claims in a manageable
4 trial, the merits of Defendants’ potential defenses, and the significant delay and potential
5 appellate issues inherent to litigation – and was reached after extensive arm’s length
6 negotiations, with the assistance of Mediator Dickstein. (Declaration of Kyle Nordrehaug, at
7 ¶3).

8 **III. TERMS OF THE PAGA SETTLEMENT**

9 The PAGA settlement is subject to Court approval consistent with Labor Code
10 §2699(1)(2). (Agreement at ¶ 53). The Agreement negotiated by the Parties provides for a
11 “Maximum Settlement Amount” payment in the amount of \$4,090,000.00 to resolve the
12 Released Claims. From this PAGA Settlement of \$4,090,000.00, there is a deduction of
13 attorneys’ fees (“Attorneys’ Fees”) in the amount of \$1,363,333.33 (which is one-third of the
14 PAGA Settlement), reimbursement of incurred litigation costs (“Litigation Costs”) in an
15 amount not to exceed \$40,000.00, a service enhancement of \$10,000 to each Plaintiff (“Service
16 Enhancement”) and Settlement Administration Costs (“Settlement Administration Expenses”)
17 estimated to be \$34,000.00. (Agreement at ¶¶ 48).³ After these deductions, the amount
18 remaining is the “Net Settlement Amount”, which is estimated to be \$2,622,666.67.

19 Of the Net Settlement Amount, seventy-five percent (75%) will be paid to the LWDA
20 and the remaining twenty-five percent (25%) will be paid to the PAGA Members (Agreement
21
22
23
24

25 ³ If the Court approves Litigation Costs and/or Attorneys’ Fees less than the amounts requested, the
26 Administrator will allocate the remainder of these amounts to the PAGA Settlement Fund. (Settlement
27 Agreement at ¶ 48(e)). To the extent the Settlement Administration Expenses are less, or the Court
28 approves payment less than \$34,000, the Administrator will allocate the remainder of this amount to
the PAGA Settlement Fund (*Id.* at ¶ 48(e)). In the event the Settlement Enhancement is approved for
less than \$10,000.00 to each Plaintiff, the unawarded difference will be added to the PAGA Settlement
Fund for distribution and not paid to Plaintiff, Plaintiffs’ Counsel, or Caliber. (*Id.* at ¶ 48(e)).

1 at ¶ 48(d)).⁴ This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A.*
2 *v. Superior Court*, 8 Cal.5th 175 (2019).

3 The PAGA Settlement Payments for each PAGA Member shall be based on the
4 Covered PAGA Pay Periods each PAGA Member worked, as a percentage of the total Covered
5 PAGA Pay Periods worked by all PAGA Members.⁵ The Covered PAGA Pay Period is the
6 period between May 27, 2022 to August 27, 2024. (Agreement at ¶ 7).

7 For mediation, Caliber represented that there are approximately 9,000 PAGA Members
8 who collectively worked approximately 544,907 pay periods during the PAGA Period.
9 (Agreement at ¶ 49).

10 Upon entry of final judgment, the Caliber Releasees shall be entitled to a release from the
11 PAGA Members for any “Released Claims”, which means all claims for PAGA civil penalties under
12 the California Labor Code, Wage Orders, regulations, and/or other provisions of law that were
13 asserted, or are reasonably related to those asserted in the Complaints in the Garcia Action and Macaire
14 Action, the PAGA letters to the LWDA, and any amendments thereto, or that could have been asserted
15 based on the facts in the Complaints in the Garcia Action and Macaire Action, the PAGA letters to
16 the LWDA, and any amendments thereto; or are reasonably related to those claims that could have
17 been asserted based on the facts in the Complaints in the Garcia Action and Macaire Action, the PAGA
18 letters to the LWDA, and any amendments, which occurred during the Covered PAGA Pay Periods
19 (collectively the “Released Claims”). (Agreement at ¶ 23). Released Claims include, but are not
20 limited to, claims for failure to pay minimum wage, failure to pay overtime or pay overtime at the
21 correct rate of pay, failure to pay for all hours worked (off-the-clock work), failure to pay double time,
22

23 ⁴ “PAGA Member(s)” means all individuals employed by Caliber Holdings, LLC., as non-exempt
24 employees in California during the PAGA Period. The PAGA Period is the period between May 27,
2022 to August 27, 2024. (Settlement Agreement at ¶ 21).

25 ⁵ See Settlement Agreement at ¶ 48(d)(ii) (“The remaining twenty-five percent (25%) of the Net
26 Settlement Amount will be the PAGA Settlement Fund and will be distributed as PAGA Settlement
27 Payments to the PAGA Members based on their eligible employee service time for Covered PAGA
28 Pay Periods, as reflected on Caliber’s internal records. PAGA Settlement Payments will be calculated
as follows: the numerator shall be the number of the PAGA Member’s individual Covered PAGA Pay
Periods; the denominator shall be the total Covered PAGA Pay Periods for all PAGA Members; this
fraction shall be multiplied by the PAGA Settlement Fund.

1 failure to pay non-productive time pay, failure to pay all wages or pay all wages at the correct rate,
2 failure to pay reporting time pay, failure to properly pay for sick time including paying sick time at the
3 correct rate, failure to pay all vested vacation and holiday time including vacation time at the correct
4 rate of pay, failure to provide meal periods, failure to provide rest periods, failure to pay meal and rest
5 premiums at the correct rate of pay, failure to timely pay final wages and wages earned during
6 employment, failure to provide reimbursement for necessary business-related expenditures, failure to
7 maintain wage-related records and/or furnish accurate wage statements, failure to provide
8 employment records upon request, unlawful deductions, failure to provide suitable seating, and
9 includes all such claims from May 27, 2022 through August 27, 2024. Class claims, claims outside
10 the Covered PAGA Pay Period, and Plaintiffs' respective non-PAGA individual claims that are
11 subject to a separate releases, are expressly not released as part of the Released Claims. (*Id.*)

12 Within and no earlier than fourteen (14) days after the QSF has been funded with the
13 Maximum Settlement Amount, and provided that no timely appeal has been filed of the Court's Order
14 Granting Settlement Approval and Judgment, the Settlement Administrator will distribute and pay
15 PAGA Settlement Payments to all PAGA Members, issue a Settlement check to the LWDA for its
16 payment of PAGA penalties, pay Plaintiffs the Service Enhancements, and pay Plaintiffs' Counsel
17 any awarded attorneys' fees and costs. The Settlement Administrator will then also issue a payment
18 to itself in the amount approved by the Court for services performed in administering this Settlement.
19 (Agreement at ¶ 66).⁶ PAGA Members who are sent PAGA Settlement Payments will have 180
20 calendar days after mailing by the Settlement Administrator to cash their settlement checks and will
21 be so advised of such deadline. If PAGA Members do not cash their checks within that period, those
22 checks will become void and the settlement payment amounts will be paid to the Cy Pres Recipient,
23 Childrens' Advocacy Institute, as designated by the Parties. (*Id.* at ¶¶ 8, 67).

24 Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing a copy of
25 the Agreement and this motion to the LWDA concurrently with the filing of the instant motion
26

27 ⁶ In the event that a timely appeal of the Court's Order Granting Settlement Approval and Judgment is
28 filed, the Settlement Administrator will not disburse the settlement amounts pursuant to this Paragraph
until a date approved by both Parties. (*Id.*).

1 for settlement approval as set forth in the accompanying proof of service in compliance with
2 Labor Code section 2699(1). In addition, Plaintiffs shall submit to the LWDA a copy of the
3 Court's judgment and order approving the Agreement within ten (10) days after entry of
4 judgment or order.

5 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

6 The parties have agreed to settle the representative claim under PAGA on behalf of the
7 State of California for civil penalties in its entirety after investigation and an arm's length
8 mediation session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to
9 fully and finally resolve the Released Claims asserted by Plaintiffs on behalf of the State of
10 California. This is only a settlement of the PAGA claims for civil penalties and is not a class
11 settlement and does not release the individual claims, if any, of the PAGA Members, other
12 than any claims under PAGA. This settlement does not release any claim that is not a PAGA
13 claim.⁷ Attorneys' Fees equal to one-third of the Maximum Settlement Amount
14 (\$1,363,333.33), a Service Enhancement of \$10,000 per Plaintiff, and Plaintiffs' Counsel's
15 Litigation Costs in an amount not to exceed \$40,000 will also be paid to Plaintiffs' Counsel as
16 part of the settlement in accordance with California Labor Code § 2699(g)(1), as set forth in
17 the Agreement.⁸ Lastly, payment to the Administrator in an amount estimated at \$34,000 to
18 perform the administrative duties to distribute the settlement money shall also be paid.
19 (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

20 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
21 **SETTLEMENT OF THE PAGA CLAIM**

22 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement
23 of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be
24 submitted to the agency at the same time that it is submitted to the court." Consequently, the

25 ⁷ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
26 by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

27 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug and Declaration of Timothy Del
28 Castillo, Plaintiffs' Counsel collectively incurred costs in the total amount of \$29,470.74, which is less
than the cost allocation in the Settlement Agreement. See Declaration of Kyle Nordrehaug at ¶ 9 and
Declaration of Timothy Del Castillo at ¶ 24.

Parties respectfully ask the Court to review and approve the settlement of the Released claims and the Maximum Settlement Amount to be paid as part of the proposed settlement.

A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable

The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore "shall" be reviewed and approved. Here, the Maximum PAGA Settlement Amount of \$4,090,000.00 is more than other PAGA settlements as it constitutes approximately \$7.51 per pay period. (Declaration of Nordrehaug, at ¶6.)

This PAGA Settlement amount compares favorably to the estimated amount of PAGA penalties. With the assistance of an expert, Plaintiffs calculated that the maximum amount of statutory PAGA civil penalties was potentially \$54,490,700 based on 544,907 pay periods applicable to the PAGA Members during the PAGA Period.⁹ (Declaration of Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be only \$2,724,535, which is far less than this settlement provides. (Declaration of Nordrehaug, at ¶6.)

⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The valuation of \$54,490,700 is the civil penalty amount without stacking. If stacking is permitted, then the valuation increases with each additional penalty added to each pay period. Plaintiffs, however, are not aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty per pay period was assessed.

1 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
2 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced
3 PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found
4 maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts
5 have actually awarded no civil penalties, even when Labor Code violations are established.
6 See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6,
7 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court)
8 (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557,
9 *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

10 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove
11 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
12 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
13 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
14 suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to
15 prove that each PAGA Member suffered a violation for each period the employee worked in
16 relation to meal or rest period violations, failure to pay minimum wages, failure to pay
17 overtime and sick pay wages, failure to provide accurate itemized wage statements, failure to
18 reimburse employees for required expenses, and failure to pay wages when due.

19 Caliber maintains that Plaintiffs and the PAGA Members were properly compensated,
20 and that it did not violate the Labor Code. Accordingly, Caliber disputes and denies Plaintiffs'
21 allegations and claims asserted in both the PAGA Notice and the Operative Complaint, which
22 are resolved by the Agreement. Caliber asserted additional defenses to the PAGA claim, not
23 only as to liability but also as to the amount of the penalties. Caliber could argue that no
24 penalties prior to the PAGA notification should be awarded because the violations were not
25 intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA
26 claims and the potential that some or all of the PAGA penalties sought may not be awarded.
27 (Declaration of Nordrehaug, at ¶7.)
28

1 Given Caliber’s potential defenses to the violations at issue, the risks and costs of
2 continued litigation, Plaintiffs and their attorneys believe that the PAGA Settlement is fair and
3 reasonable. (Declaration of Nordrehaug, at ¶7.) Caliber has similarly concluded that it is
4 desirable that the action is settled in the manner and upon the terms and conditions set forth in
5 the Agreement in order to avoid further expense, inconvenience and distraction of further legal
6 proceedings, as well as the uncertainty of litigation. Caliber has determined that it is desirable
7 and beneficial to put to rest the claims in this action and Caliber agree that the PAGA
8 Settlement is fair, reasonable, and adequate.

9 Plaintiffs’ Counsel have significant experience litigating wage and hour claims
10 including claims for PAGA penalties, and the PAGA Settlement here is similar to or greater
11 than similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.)
12 The PAGA Settlement, along with the other terms of the proposed settlement, were negotiated
13 by experienced counsel at arm's length with the assistance of a private mediator Michael
14 Dickstein, Esq. (Declaration of Nordrehaug, at ¶7.)

15 As set forth in the accompanying proof of service, the LWDA has been provided notice
16 of this motion and the PAGA settlement. The decision of the LWDA to accept the PAGA
17 Settlement and not oppose the motion should be given considerable weight. This is not a
18 situation where the Court needs to be concerned about the rights of absent employees as in a
19 class settlement, as this PAGA-only settlement does not release the individual claims of absent
20 employees other than PAGA claims, and the LWDA is a sophisticated government entity that
21 is more than able to look out for its own rights.

22 **B. The Remaining Settlement Terms Are Fair And Reasonable**

23 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
24 Code § 2699(1) does not require that a court approve any other elements of the proposed
25 settlement. Because there are no class allegations for which Plaintiffs seek approval, the
26 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not
27 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties
28

sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE

PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the amount of \$1,363,333.33 representing one-third of the \$4,090,000 Maximum Settlement Amount. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

First, the requested fees are justified by the result achieved. Plaintiffs' Counsel negotiated a recovery of \$4,090,000, and this result justifies the requested fees equal to one third of this recovery. This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that “fee awards in class actions average around one-third of the recovery” regardless of “whether the percentage method or the lodestar method is used.” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008))).

Second, the fee award is justified by the work performed and contributions to the case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8 and the Declaration of Timothy Del Castillo ¶ 20, the fee award represents Plaintiffs' Counsel's current lodestar of \$441,167.50 with a reasonable multiplier of less than 3.1, with significant additional work to be performed such that the multiplier will ultimately be even less.¹⁰

Generally, the Ninth Circuit and California Courts award positive multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award

¹⁰ A true and correct copy of Plaintiffs' Counsel's billing records are attached as Exhibit #2 to the Declaration of Kyle Nordrehaug and Exhibit B to the Declaration of Timothy Del Castillo.

1 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
2 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
3 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
4 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
5 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52
6 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014)
7 (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales*
8 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving
9 fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk
10 multipliers).

11 Third, consideration of the service factors justify the service of the lodestar. Courts
12 multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
13 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*,
14 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria
15 is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

16 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses
17 in the total amount of \$29,470.74 which is less than the \$40,000 allocation for costs in the
18 Agreement, so the difference of \$10,529.26 will be added to the PAGA Payment amount.
19 These expenses are documented in the accompanying Declaration of Kyle Nordrehaug at ¶9
20 [expenses of \$18,327.52] and the Declaration of Timothy Del Castillo at ¶24 [expenses of
21 \$11,143.22].

22 **VII. CONCLUSION**

23 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA
24 settlement as set forth in the Agreement and enter the proposed order and judgment submitted
25 herewith.

26 Dated: November 12, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

Kyle Nordrehaug, Attorney for Plaintiffs